



# LEGAL COUNSEL

## Working Group

May 27, 2020

### EXECUTIVE SUMMARY

The Council of Insurance Agents & Brokers' Legal Counsel Working Group convened a virtual meeting to discuss federal and state actions undertaken in response to the novel coronavirus (COVID-19).

The Working Group was chaired by Working Group Chair Andy Impastato, Vice President, Insurance Counsel and Director of Industry Affairs for BXS Insurance, and was attended by over 60 of the insurance brokerage industry's top legal counsels. The virtual meeting was staffed by The Council's General Counsel John Fielding, Chief Legal Officer Scott Sinder, Senior Vice President of Government Affairs Joel Wood, Vice President of Government Affairs Joel Kopperud, and Director of Government Affairs Blaire Bartlett.

### FEDERAL UPDATES

As we prepare to enter June, Congress is hard at work on determining what its next COVID-19 relief package will look like. The primary proposal on the table is House Speaker Nancy Pelosi's (D-CA) HEROES Act (i.e., "CARES 2.0"), which passed the House on May 15, 2020. The legislation, however, faces an uphill battle in the Senate, where all signs point to Senate Majority Leader Mitch McConnell (R-KY) putting forth his own competing package that provides state and local aid in conjunction with liability relief or some sort of safe harbor for businesses that opt to reopen (or were deemed essential under state and local stay-at-home orders).

Beyond the next relief package, the Working Group also received updates from Wood, Kopperud, and Bartlett on several current and future federal issues, including:

- Retrospective application of business interruption coverage;
- The path forward for prospective pandemic relief (e.g., a Pandemic Risk Insurance Program (PRIA) floated by Representative Carolyn Maloney (D-NY)) that mirrors the framework of the Terrorism Risk Insurance Program or the alternative proposal being floated by insurers that would mimic the National Flood Insurance Program and place the program within the Federal Emergency Management Agency's purview).
- Challenges surrounding America's Recovery Fund (i.e., a fund modeled after the 9/11 Victim Compensation Fund to ensure continuity and promote recovery of struggling businesses that would involve—among other things—voluntary participation by insurers, brokers, third-party administrators, loss adjusters, etc.); and
- How Congress will address a host of benefits issues, including COBRA subsidies.

As with all things, the timing surrounding these developments remains relatively uncertain.

## STATE UPDATES

As states begin to reopen, state regulators appear to be slowing down in attempting to address issues related to COVID-19. The state legislatures, on the other hand, are continuing to address the issues of the day. Here's where we are, by the numbers:

- **10 states** (DC, LA, MA, MI, NJ, NY, OH, PA, SC, and WY) have introduced bills on business interruption coverage, though no state has yet enacted such legislation.
- **15 states** (AK, CA, LA, MA, MI, MN, NC, NJ, NY, OH, PA, SC, UT, VT, and WY) have introduced legislation establishing a presumption of compensability in the workers' compensation context and **5 of those states** (AK, MA, MN, UT, and WY) have enacted some presumption of compensability for a limited class of workers (e.g., emergency responders, health care providers, etc.). Additionally, legislation addressing this issues is moving through the legislature in California and New Jersey.
- **17 states** (AK, AL, AZ, DC, IL, LA, MA, MI, MN, NC, NJ, NY, OH, OK, PA, UT, and WI) have introduced legislation offering some form of liability protection/safe harbor and **8 of those states** (AK, DC, MA, NC, NJ, OK, UT, and WI) have enacted such protections, which primarily apply to health and emergency services providers.

Beyond these issues, the Working Group also discussed The Council's outreach to regulators on other regulatory issues (e.g., premium grace periods, agency billing, eligibility issues, etc.). In particular, Fielding noted that the guidance in most states that put forth guidance either requiring or requesting that insurers offer some form of premium relief is now expiring. With expirations underway or around the corner in every state, please reach out to The Council if issues arise (e.g., carriers seeking to impose obligations on brokers).

Please continue to use The Council's [COVID-19 Resource Center](#) as—including the legislative trackers on business interruption coverage and workers' compensation, the state premium forbearance tracker, the state insurance regulatory tracker, and the broader regulatory tracker—as a source of the recent and pending developments at the state level.

## MEMBER INFORMATION EXCHANGE/OTHER ISSUES

Members also spent time discussing other issues, including:

- New Jersey's executive order (and corresponding Department of Banking and Insurance guidance) that required rate reductions for certain lines of coverage;
- Potential defense costs and other economic impacts associated with COVID-19-related general liability claims;
- Implications of the California workers' compensation executive order and responses by insurers and third-party administrators; and
- The Affordable Care Act requirements associated with rehiring employees and providing benefits.

## SEE YOU SOON!

As we all continue to adjust to the new normal, we will be arranging regular conference calls for the Legal Counsel Working Group. We anticipate the next call will take place on **June 9, 2020** at

3:00PM EST. If you have any questions in the meantime, please email John Fielding at [john.fielding@ciab.com](mailto:john.fielding@ciab.com).